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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

ERICK R. TORREGROZA, JR.,

Defendant and Appellant.

H036542

(Santa Clara County

Super. Ct. Nos. C1093209 &
C1092700)

Defendant Erick R. Torregroza, Jr., was charged by two separate complaints with one felony (vandalism) and four misdemeanors. Based upon the opinion of a psychologist, the court determined that defendant was incompetent to stand trial and ordered him committed to a state hospital for a term of no more than three years.

Defendant challenges the commitment order on the ground that the court failed to appoint a second expert to evaluate his competence. Subsequent to the commitment order and the filing of the notice of appeal, defendant was restored to competency, the court reinstated criminal proceedings, defendant entered no contest pleas, and the court granted three-years' probation. The Attorney General contends that the appeal is moot. We agree and will dismiss the appeal.

FACTS¹

Defendant was alleged to have committed a battery and to have threatened bodily injury or death upon the mother of his child on November 10, 2010. It was further alleged that 10 days later, defendant again “threatened his pregnant girlfriend with harm, pushed her to the floor, and grabbed her by the hair while holding a knife to her throat. On the same day, he allegedly damaged the car in which she was attempting to escape from him . . .”

PROCEDURAL BACKGROUND

I. *Pre-Appeal Proceedings*

Defendant was charged (case no. C1092700) by misdemeanor complaint filed November 22, 2010, with battery on the mother of his child in violation of Penal Code sections 242 and 243, subdivision (e) (count 1),² and making threats to commit a crime resulting in death or great bodily injury (§ 422; count 2). He was also charged (case no. C1093209) by felony complaint filed November 24, 2010, with vandalism causing damage of \$400 or more, a felony (§ 594, subds. (a), (b)(1); count 1), misdemeanor battery on the mother of his child (§§ 242-243, subd. (e); count 2), and exhibiting a deadly weapon other than a firearm, a misdemeanor (§ 417, subd. (a)(1); count 3).

At a December 2010 hearing, the court suspended criminal proceedings in both cases pending a determination of defendant’s competence to stand trial. Based upon the report of a psychologist, and after counsel submitted the matter on

¹ Our brief summary of facts is taken from the report of psychologist, Dr. David F. Berke, in conjunction with the allegations of the two complaints.

² All further statutory references are to the Penal Code unless otherwise stated.

the report, the court thereafter found defendant not competent to stand trial in both cases. On January 26, 2011, it issued an order committing defendant to the State Department of Mental Health for placement in a locked psychiatric facility for care and treatment for the incompetent under section 1370, subdivision (a)(2), with a maximum term of three years. Defendant filed a timely notice of appeal from the commitment order, which is appealable under Code of Civil Procedure section 904.1, subdivision (a)(1). (*People v. Fields* (1965) 62 Cal.2d 538, 542.)

II. *Post-Appeal Proceedings*³

In April 2011, the medical director of Atascadero State Hospital certified that defendant was competent to stand trial. The same month, the court reinstated criminal proceedings against defendant in both cases. On May 4, 2011, defendant entered no contest pleas to the charges alleged in both cases. On June 24, 2011, in case number C1092700 (relative to the two misdemeanor offenses to which defendant pleaded no contest), the court placed defendant on three-years' formal probation on condition that he serve six months in jail. On the same day in case number C1093209 (relative to the one felony and two misdemeanor offenses to which defendant pleaded no contest), the court placed defendant on three-years' formal probation on condition that he serve six months in jail. The court ordered the jail sentence in case number C1093209 to run concurrently with the sentence in case number C1092700 and ordered the jail terms in both cases deemed served.

³ After the appeal was filed, we granted respondent's request to augment the record to include documents from the superior court file postdating the appeal.

DISCUSSION

I. *The Commitment Order*

A. *Contentions*

Defendant contends that the court erred in declaring him incompetent to stand trial. He argues that before making such an order, the court should have appointed a second psychiatrist or licensed psychologist to evaluate defendant's competence pursuant to section 1369, subdivision (b).⁴ Defendant asserts that the court was compelled to appoint a second professional because it had been informed that defendant was not seeking a finding of mental incompetence.⁵

The Attorney General does not respond to the merits of this argument. Instead, she asserts that the procedural events occurring after the commitment order have rendered the appeal moot.⁶

⁴ “The court shall appoint a psychiatrist or licensed psychologist, and any other expert the court may deem appropriate, to examine the defendant. In any case where the defendant or the defendant's counsel informs the court that the defendant is not seeking a finding of mental incompetence, the court shall appoint two psychiatrists, licensed psychologists, or a combination thereof. One of the psychiatrists or licensed psychologists may be named by the defense and one may be named by the prosecution. . . .” (§ 1369, subd. (a).)

⁵ Neither defendant nor his trial counsel specifically requested the appointment of a second professional. Nor does the record show that either defendant or counsel specifically advised the court that defendant was not seeking a finding of mental incompetence. But defendant argues that the following statement he made to the court at the time criminal proceedings were suspended in December 2010 was sufficient to trigger the requirement of the appointment of a second professional under section 1369, subdivision (a): “My girlfriend is about to have her kid, and I want to be there.” While we doubt the legal merit of defendant's assertion that this statement compelled the court to appoint a second professional, we need not decide the question, since we conclude that the appeal is moot.

⁶ Defendant did not file a reply brief and therefore has not responded to the Attorney General's contention that the appeal is moot.

We will first address the Attorney General's contention, since the question of whether a case is moot is a threshold matter that "is central to our jurisdiction. [Citations.]" (*Mercury Interactive Corp. v. Klein* (2007) 158 Cal.App.4th 60, 75.)

B. *Mootness*

" 'It is well settled that an appellate court will decide only actual controversies. Consistent therewith, it has been said that an action which originally was based upon a justiciable controversy cannot be maintained on appeal if the questions raised therein have become moot by subsequent acts or events.' " (*Giles v. Horn* (2002) 100 Cal.App.4th 206, 226-227.) " 'It necessarily follows that when, pending an appeal from the judgment of a lower court, and without any fault of the [respondent], an event occurs which renders it impossible for this court, if it should decide the case in favor of [appellant], to grant him any effectual relief whatever, the court will not proceed to a formal judgment, but will dismiss the appeal.' [Citations.]" (*Consolidated Vultee Air. Corp. v. United Automobile* (1946) 27 Cal.2d 859, 863; see also *Eye Dog Foundation v. State Bd. of Guide Dogs for the Blind* (1967) 67 Cal.2d 536, 541.)

The case of *People v. Lindsey* (1971) 20 Cal.App.3d 742 (*Lindsey*) is directly on point. There, the defendant appealed an order determining he was insane and unable to stand trial and committed him to a state hospital. (*Id.* at p. 743.) While the appeal was pending, the state hospital's superintendent certified the defendant as sane and the criminal proceedings resumed. (*Ibid.*) The appellate court concluded that the appeal was moot and ordered it dismissed, concluding that "the superintendent's certification of sanity terminates the commitment, leaving no prejudicial consequences which could be ameliorated by a successful appeal." (*Id.* at p. 744.)

Lindsey clearly controls. Here, as in *Lindsey*, the superior court found defendant was not competent to stand trial, and defendant appealed the

commitment order. While the appeal was pending, defendant was restored to competency, the criminal proceedings resumed, defendant ultimately pleaded no contest to the charges in both cases, and he received grants of probation. These circumstances have thus rendered the instant appeal challenging the superseded commitment order moot.

DISPOSITION

The appeal is dismissed.

Duffy, J.*

WE CONCUR:

Rushing, P.J.

Premo, J.

* Retired Associate Justice of the Court of Appeal, Sixth Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.